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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/499,693	02/08/2000	Insu Lee	00120/P-4858	1622

7590 11/21/2002
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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 11/21/2002

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/499,693

Applicant(s)

LEE ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

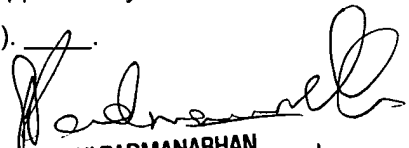
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 26-45.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


SREENI PADMANABHAN
PRIMARY EXAMINER

11/20/02

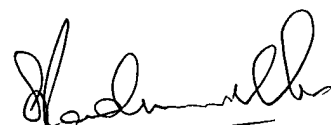
Continuation of 5. does NOT place the application in condition for allowance because: a) the 102 and 103 rejections are maintained for reasons of record in the Office Action mailed 10/16/02, Paper No. 12;

b) Applicant argues, regarding the Amendment of Paper No. 18 to claims 26, 30, 34, 38 and 42, "No elements or limitations were added or removed. Before and after the claim amendments, the same claim elements were present". This argument is not persuasive. The Examiner respectfully points out that in the Office Action mailed 5/9/02, Paper No. 15, the Examiner rejected claims 26-45 as being vague and indefinite, as it was not clear to what composition the phrase "composition comprising flaxseed oil, wherein the composition comprises linoleic fatty acid and alpha-linolenic fatty acid" in the independent claims, was referring to. The Examiner asked Applicant if the compositions comprised flaxseed oil, linoleic fatty acid, and linolenic fatty acid, or if composition was comprised of something else. As evidenced by the prior art rejections in the Office Action of 5/9/02, Paper No. 15, it is clear that the Examiner interpreted the claim to recite a composition comprising linoleic and alpha-linolenic acid. This interpretation was the result of the Examiner's reading of the instant specification and the originally filed claims. Thus, Applicant's amendment of 8/9/02 to claims 26, 30, 34, 38, wherein a composition comprising flaxseed oil was recited, wherein the flaxseed oil comprises linoleic and alpha-linolenic acids was recited, necessitated the Examiner's new grounds of rejections. While the Amendment of 8/9/02 overcomes the 112 rejections over the confusion of the phrase "a composition comprising flaxseed oil, wherein the composition comprises linoleic fatty acid and alpha-linolenic fatty acid", in the Office Action of 5/9/02, the Amendment necessitated new grounds of rejection, as the instantly amended claims clearly comprise flaxseed oil, wherein the oil comprises a mixture of linoleic fatty acid and alpha-linolenic fatty acid.

Applicant argues, "Since the claim amendments in the response filed August 9, 2002 simply rearranged the claim elements, the Examiner knew or reasonable should have known what was already claimed". This argument is not persuasive. The Amendment of 8/9/02 did not simply rearrange the claim elements. The Amendment of 8/9/02 altered the scope and meaning of the claim. Furthermore, the Examiner respectfully points out that the claims are originally filed as directed to a composition comprising linoleic and alpha-linolenic acid. Thus, it was reasonable for the Examiner, given the confusion of the language of claims 26-45 and given the language of the originally filed claims, to examine claims 26-45, prior to the 8/9/02 amendment, as reciting a composition comprising linoleic and alpha-linolenic acid.

Applicant argues, "Applicants note that the Examiner has rejected claims that were not amended. Specifically, claims 27-29, 31-33, 35-37, and 39-41 were not amended, but are rejected on the newly cited art". This argument is not persuasive. The Examiner respectfully points out that claims 27-29, 31-33, 35-37, and 39-41, depend on claims 26, 30, 34 and 38. Thus, Amendments to the independent claims directly affect the dependent claims. Furthermore, the Examiner respectfully points out that the the 112 rejection, regarding the confusion of the phrase ""composition comprising flaxseed oil, wherein the composition comprises linoleic fatty acid and alpha-linolenic fatty acid", was made over all the claims. In doing so, the Examiner was pointing out that the confusion in the independent claims resulted in the same confusion in the dependent claims.

For these reasons, the finality of the Rejection mailed 10/16/02, Paper No. 20, is maintained.


SREENI PADMANABHAN
PRIMARY EXAMINER 11/20/02